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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DOLORES J. MURPHY, as Trustee of the  
CHARLES M. MURPHY  
ADMINISTRATIVE TRUST,

Plaintiff,

v.

UNITED STATES OF AMERICA.,

Defendant.

No. 1:24-cv-00260-KES-BAM

**~~PROPOSED~~ ORDER RE  
STIPULATION TO CONTINUE JOINT  
SCHEDULING REPORT DEADLINE  
AND MANDATORY SCHEDULING  
CONFERENCE (ECF NOS. 38, 39)**

Plaintiff Dolores J. Murphy, as Trustee of the Charles M. Murphy Administrative Trust (the “Administrative Trust”), initiated this suit for refund of tax/civil penalties against Defendant, the United States of America, on February 29, 2024. (ECF No. 1.) Defendant, the United States of America’s Answer or other responsive pleading in this case was due on August 5, 2024. The initial mandatory scheduling conference is currently scheduled for July 16, 2025. (ECF No. 38).

On August 5, 2024, Defendant the United States filed a Notice of Motion to Dismiss (ECF No. 17), United States’ Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) and Memorandum in Support (ECF No. 17-1), (hereinafter referred to as “Defendant United States’ Motion to Dismiss”), and Declaration of Brian D. Johnson in Support of the United States’ Motion to Dismiss (ECF No. 17-2).

On August 19, 2024, counsel for Plaintiff Dolores J. Murphy, as Trustee of the Administrative Trust, filed Plaintiff’s Opposition to Defendant’s Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) (ECF No. 19) and Declaration of Craig A. Houghton in

1 Support of Plaintiff's Opposition to Defendant's Motion to Dismiss Pursuant to Fed. R. Civ. P.  
2 12(b)(1) and 12(b)(6) (ECF No. 19-1).

3 On August 22, 2024, the Court filed a Minute Order (ECF No. 20) ordering Robert C.  
4 Bombard to file a declaration detailing the parties' meet and confer efforts prior to the filing of  
5 Defendant United States Motion to Dismiss and Supporting Memorandum and Declaration.

6 On August 26, 2024, Robert C. Bombard filed the Declaration of Robert C. Bombard  
7 (ECF No. 21) pursuant to the Court's August 22, 2024, Minute Order (ECF No. 20).

8 On August 28, 2024, Defendant United States filed United States' Reply to Plaintiff's  
9 Opposition to Defendant's Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6)  
10 (ECF No. 22).

11 On August 30, 2024, Connor J. Pestovich filed a Notice of Appearance in this case (ECF  
12 No. 23) with the Court to cover this case for Robert C. Bombard during his upcoming family  
13 leave for several months. In early December of 2024 Mr. Bombard returned from his family  
14 leave and resumed the role as lead counsel for Defendant United States in this case,

15 Per Minute Orders filed by the Court on September 16, 2024, and September 18, 2024,  
16 (ECF Nos. 24 and 25), the Court set the hearing on Defendant United States' Motion to Dismiss  
17 for November 4, 2024. The hearing on Defendant United States' Motion to Dismiss was held and  
18 argued before the Honorable Kirk E. Sherriff on November 4, 2024. After the hearing, the Court  
19 filed a Minute Order (ECF No. 27) allowing Plaintiff Dolores J. Murphy, as Trustee of the  
20 Administrative Trust, to file a supplemental memorandum of points and authorities in support of  
21 Plaintiff's Opposition to Defendant United States' Motion to Dismiss and Supporting  
22 Declaration by November 4, 2024, and Defendant United States to file a reply thereto by  
23 November 25, 2024, and to then take the matter under submission.

24 On November 4, 2024, Plaintiff Dolores J. Murphy, as Trustee of the Administrative  
25 Trust, filed her Supplemental Memorandum of Points and Authorities Regarding the Proper  
26 Determination of Reasonable Cause and No Willful Neglect Under 26 U.S.C. §§ 6651(a)(1) and  
27 6651(a)(2) (ECF No. 28).

1 On November 25, 2024, Defendant United States filed United States' Response to  
2 Plaintiff's Supplemental Memorandum of Points and Authorities Regarding the Proper  
3 Determination of Reasonable Cause and No Willful Neglect Under 26 U.S.C. §§ 6651(a)(1) and  
4 6651(a)(2) (ECF No. 29).

5 On January 13, 2025, the parties filed a Stipulation to Continue Joint Scheduling Report  
6 Deadline and Mandatory Scheduling Conference (ECF No. 30) stipulating to a continuance of  
7 the mandatory scheduling conference by ninety (90) days. On January 14, 2025, the Court issued  
8 an Order Re Stipulation to Continue Joint Scheduling Report Deadline and Mandatory  
9 Scheduling Conference (ECF No. 31) granting that stipulation and set the mandatory scheduling  
10 conference for April 21, 2025.

11 On February 18, 2025, the Court issued an Order Denying in Part and Granting in Part  
12 Defendant's Motion to Dismiss (ECF No. 32).

13 On March 4, 2025, Defendant United States filed United States' Answer to the Complaint  
14 (ECF No. 33).

15 On March 18, 2025, Robert C. Bombard, former lead counsel for Defendant United  
16 States in this case, filed a Notice of Withdrawal of Robert C. Bombard (ECF No. 34) notifying  
17 the Court that he will be temporarily detailed to another component of the Department of Justice  
18 for a period of six month that will not permit him to work on his Tax Division cases for the  
19 duration of the detail, and that Connor J. Pestovich, another Trial Attorney with the Tax Division  
20 who has appeared for Defendant United States in this case (ECF No. 23), will become new lead  
21 counsel for Defendant United States in this case.

22 The parties have proffered that in late February and early March of 2025, counsel for  
23 Plaintiff Dolores J. Murphy, as Trustee of the Administrative Trust, and Mr. Bombard, as former  
24 lead counsel for Defendant United States, exchanged e-mail messages regarding both a proposed  
25 settlement recommendation of this case by Defendant United States and Plaintiff Dolores J.  
26 Murphy's, as Trustee of the Administrative Trust, questions and response thereto and position  
27 regarding the merits of Plaintiff's case and a possible basis of settlement of this case.

1 The parties have also proffered that on April 4, 2025, counsel for Plaintiff Dolores J.  
2 Murphy, as Trustee of the Administrative Trust, and Mr. Pestovich, as new lead counsel for  
3 Defendant United States, continued settlement discussions regarding this case, including an  
4 alternate settlement proposal of this case by Plaintiff Dolores J. Murphy, as Trustee of the  
5 Administrative Trust.

6 On April 10, 2025, the counsel for the parties filed a Stipulation to Continue Joint  
7 Scheduling Report Deadline and Mandatory Scheduling Conference (ECF No. 35), stipulating to  
8 a continuance of the mandatory scheduling conference by thirty (30) days to May 21, 2025, or  
9 such other date as may be determined by the Court. Counsel for the parties agreed to this  
10 stipulation because Defendant United States' current counsel of record needed additional time to  
11 review the case's files, filings, and history to help meaningfully develop a discovery plan as well  
12 as to explore the possibility of resolving this case without further litigation, including the  
13 alternate settlement proposal of this case made by Plaintiff Dolores J. Murphy, as Trustee of the  
14 Administrative Trust, on April 4, 2025. The Court granted that stipulation on April 11, 2025,  
15 continuing the mandatory scheduling conference to May 28, 2025 and the joint scheduling report  
16 deadline to May 21, 2025.

17 The parties have proffered that counsel for Plaintiff Dolores J. Murphy, as Trustee of the  
18 Administrative Trust, and Mr. Pestovich, as new lead counsel for Defendant United States, have  
19 continued settlement discussions, including exchanging multiple e-mails messages and having  
20 multiple telephone calls between May 15–19, 2025. The parties have proffered that during these  
21 telephone calls and in these e-mail messages, counsel for Defendant United States has provided  
22 an alternate settlement recommendation to counsel for Plaintiff Dolores J. Murphy, as Trustee of  
23 the Administrative Trust, which counsel for the parties have discussed and evaluated. The parties  
24 have proffered that, subject to further discussions and calculations, there may be a basis for  
25 settlement based on Defendant United States' alternate settlement recommendation, but that they  
26 need further time to fully discuss and investigate this possibility.

1 On May 20, 2025, counsel for the parties filed a Joint Status Report and Stipulation to  
2 Continue Joint Scheduling Report Deadline and Mandatory Scheduling Conference (ECF No.  
3 37), providing the Court with an update on the status of their settlement discussions in this case  
4 and stipulating to a continuance of the mandatory scheduling conference by fifty (50) days to  
5 July 17, 2025, or such other date as may be determined by the Court, to give the parties sufficient  
6 time to obtain and review the IRS's calculations relating to Defendant United States' alternate  
7 settlement recommendation and continue to meet and confer to determine whether a basis of  
8 settlement of this case can be agreed upon by the parties and then file a further joint status report  
9 with the Court.

10 The Court granted the parties' May 20, 2025, request on May 22, 2025, continuing the  
11 Mandatory Scheduling Conference set for May 28, 2025, to July 16, 2025. (ECF No. 38).

12 The parties have proffered that counsel for Defendant United States has continued to  
13 attempt in good faith to obtain the calculations from the IRS related to the United States'  
14 05/16/2025 Alternate Settlement Recommendation; however, he has not received these  
15 calculations from the IRS due to confusion at the IRS about who should be preparing these  
16 calculations. Given that the parties need for the IRS's calculations to properly evaluate  
17 Defendant United States' 05/16/2025 Alternate Settlement Recommendation, it is appropriate to  
18 continue the Mandatory Scheduling Conference and associated deadline for the parties to file a  
19 joint scheduling report with the Court to save the Court and the parties the time and expense of  
20 preparing for this Mandatory Scheduling Conference while the parties are trying to determine  
21 whether a basis of settlement of this case exists which would make this hearing unnecessary.

22 The Court finds that good cause exists to grant the requested extension of the mandatory  
23 scheduling conference in this case.

24 Accordingly, IT IS HEREBY ORDERED that:

25 1. The Mandatory Scheduling Conference currently set for July 16, 2025, is  
26 continued to **September 16, 2025, at 9:00 AM in courtroom 8 (BAM) before Magistrate**  
27 **Judge Barbara A. McAuliffe**. The parties shall appear at the conference remotely either via  
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1 Zoom video conference or Zoom telephone number. The parties will be provided with the Zoom  
2 ID and password by the Courtroom Deputy prior to the conference. The Zoom ID number and  
3 password are confidential and are not to be shared. Appropriate court attire required; and

4 2. The parties shall file a joint scheduling report seven (7) days prior to the  
5 scheduling conference.

6  
7 The Court permits this continuance in the interest of justice, but endless continuances will  
8 not be permitted.

9  
10 IT IS SO ORDERED.

11 Dated: July 9, 2025

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE